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Response To Notice Of Allowability - Item #5
Pat. App. Serial No. 09/676,296
Attorney Ref. No. 32156.0005
Page 1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of Boerner

Serial No.: 09/676,296 ✓

Filed: September 28, 2000

For: Emotive Index Corresponding To A Message

Examiner: M.J. Sked

Group Art Unit: 2655

RESPONSE TO NOTICE OF ALLOWABILITY - ITEM #5

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

A Notice Of Allowability dated April 26, 2005 was included with the Notice Of Allowance And Fee(s) Due, which was dated May 4, 2005. Item #5 of the Notice Of Allowability noted that a substitute declaration must be submitted. Page 2 - section 6 of the Notice Of Allowability states that the declaration filed January 12, 2001 was not signed by one of the inventors, Peer Boerner.

I hereby Certify that this Correspondence is being deposited this date with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

Alicia Falkenbach

Name of person signing the certification

Alicia Falkenbach

Signature

June 3, 2005

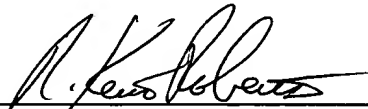
Date

Enclosed is a copy of the materials mailed on January 9, 2001 and received by the USPTO on January 12, 2001. Two declarations were filed - one signed by inventor Frey and one signed by inventor Boerner. Also enclosed is a copy of the postcard stamped by the USPTO and listing the two declarations. This post card is evidence that both declarations were received by the USPTO on January 12, 2001.

The undersigned is not aware of an obligation to have all inventors sign the same copy of the declaration. It is respectfully requested that the examiner identify that portion of the MPEP, CFR or USC which imposes such an obligation, or withdraw the requirement to submit a substitute declaration.

The Examiner is invited to call the undersigned if any questions remain following review of this response.

Respectfully submitted,



R. Kent Roberts
Attorney for Applicant
Registration No. 40,786

Date: June 3, 2005

Hodgson Russ LLP
One M&T Plaza, Suite 2000
Buffalo, NY 14203-2391

Enclosures

- copy of Jan. 9, 2001 materials (9 pages)
- copy of stamped post card (1 page)



I hereby Certify that this Correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231, on January 9, 2001.

Michelle M. Scordato

Name

Michelle M. Scordato

Signature

January 9, 2001

Date of Signature

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Boerner, et al

Serial No.: 09/676,296

Filed: September 28, 2000

For: Device and Method of Determining Emotive Index
Corresponding to a Message

RESPONSE

Assistant Commissioner for Patents
Attention: Box Missing Parts
Washington, D.C. 20231

Sir:

Responsive to the Notice To File Missing Parts Of Nonprovisional Application dated November 9, 2000 (copy enclosed), herewith is an executed Oath and Declaration from each of the inventors. Enclosed is payment of the \$65 surcharge. If underpayment or overpayment has been made, please charge to Deposit Account No. 08-2442.

Respectfully submitted,

Hodgson Russ, ANDREWS,
WOODS & GOODYEAR LLP

By

R. Kent Roberts

R. Kent Roberts, Reg. No. 40,786

One M&T Plaza, Suite 2000
Buffalo, New York 14203-2391
(716) 848-1510
Date: January 9, 2001



The Patent and Trademark Office date stamp hereon
will acknowledge receipt of:

Fee Transmittal (1 page)

Response Letter to the Assistant Commissioner for Patents (1 page)

Copy of Notice to File Missing Parts of Nonprovisional Application (1 page)

Two (2) Declarations for Utility or Design Patent Application (3 pages each)

Check in the Amount of \$65

In Re Application of: Boerner, et al

Serial No. 09/676,296

Filed: September 28, 2000

Re: Device and Method of Determining Emotive Index
Corresponding to a Message



32156.0005 (RKR/ms)

MAE 15N





UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
09/676,296	09/28/2000	Peer Boerner	32156.0005

R Kent Roberts
Hodgson Russ Andrews Woods & Goodyear LLP
Suite 2000
One M&T Plaza
Buffalo, NY 14203-2391

FORMALITIES LETTER



OC000000005545477

Date Mailed: 11/09/2000

NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(b)

Filing Date Granted

An application number and filing date have been accorded to this application. The item(s) indicated below, however, are missing. Applicant is given TWO MONTHS from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The oath or declaration is unsigned.
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(e) of \$65 for a small entity in compliance with 37 CFR 1.27, must be submitted with the missing items identified in this letter.
- The balance due by applicant is \$ 65.

*A copy of this notice **MUST** be returned with the reply.*

Customer Service Center
Initial Patent Examination Division (703) 308-1202

PART 2 - COPY TO BE RETURNED WITH RESPONSE

DECLARATION FOR UTILITY OR DESIGN PATENT APPLICATION (37 CFR 1.63)

Attorney Docket Number 32156.0005

First Named Inventor Boerner, et al

COMPLETE IF KNOWN

Application Number 09/676,296

Filing Date September 28, 2000

Group Art Unit

Examiner Name

☐ Declaration
Submitted
with Initial
Filing

OR

☒ Declaration
Submitted after Initial
Filing (surcharge
(37 CFR 1.16(e))
required)

As a below named inventor, I hereby declare that:

My residence, post office address, and citizenship are as stated below next to my name.

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

Device and Method of Determining Emotive Index Corresponding to a Message

☐ the specification of which
is attached hereto
OR

(Title of the Invention)

☒ was filed on (MM/DD/YYYY) 09/28/2000 as United States Application Number or PCT International
Application Number 09/676,296 and was amended on (MM/DD/YYYY) (if applicable).

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment specifically referred to above.

I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR 1.56.

I hereby claim foreign priority benefits under 35 U.S.C. 119(a)-(d) or 365(b) of any foreign application(s) for patent or inventor's certificate, or 365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below, by checking the box, any foreign application for patent or inventor's certificate, or of any PCT international application having a filing date before that of the application on which priority is claimed.

Prior Foreign Application (Numbers)	Country	Foreign Filing Date (MM/DD/YYYY)	Priority Not Claimed	Certified Copy Attached?	
				YES	NO
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

☐ Additional foreign application numbers are listed on a supplemental priority data sheet PTO/SB/02B attached hereto.

I hereby claim the benefit under 35 U.S.C. 119(e) of any United States provisional application(s) listed below.

Application Number(s)	Filing Date (MM/DD/YYYY)	<input type="checkbox"/> Additional provisional application numbers are listed on a supplemental priority data sheet PTO/SB/02B attached hereto.

DECLARATION - Utility or Design Patent Application

I hereby claim the benefit under 35 U.S.C. 120 of any United States application(s), or 365(c) of any PCT international application designating the United States of America, listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT International application in the manner provided by the first paragraph of 35 U.S.C. 112, I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR 1.55 which became available between the filing date of the prior application and the national or PCT international filing date of this application.

U.S. Parent Application or PCT Parent
Number

Parent Filing Date
(MM/DD/YYYY)

Parent Patent Number
(if applicable)

JUN 03 2005

☐ Additional U.S. or PCT international application numbers are listed on a supplemental priority data sheet PTO/SB/02B attached hereto.

As a named inventor, I hereby appoint the following registered practitioner(s) to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith:

☐ Customer Number

OR

☒ Registered practitioner's name/registration number listed below

Place Customer
Number Bar Code
Label Here

Name	Registration Number	Name	Registration Number
Ranjana Kadle	40,041	R. Kent Roberts	40,786
Martin G. Linihan	24,926	Michael F. Scalise	34,920
Kevin D. McCarthy	35,278	Daniel C. Oliverio	33,435
David L. Principe	39,336	Edwin T. Bean, Jr.	16,639

☐ Additional registered practitioner(s) named on supplemental Registered Practitioner Information sheet PTO/SB/02C attached hereto

Direct all correspondence to: ☐ Customer Number
or Bar Code Label

OR ☒ Correspondence address below

Name	R. Kent Roberts				
Address	Hodgson, Russ, Andrews, Woods & Goodyear LLP				
Address	One M&T Plaza, Suite 2000				
City	Buffalo	State	New York	ZIP	14203-2391
Country	United States	Telephone	(716) 856-4000	Fax	(716) 849-0349

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Name of Sole or First Inventor:

☐ A petition has been filed for this unsigned inventor

Given Name (first and middle [if any])				Family Name or Surname			
Peer				Boerner			
Inventor's Signature						Date	
Residence: City	Valrico	State	Florida	Country	US	Citizenship	
Post Office Address	2313 Timbergrove Drive						
Post Office Address							
City	Valrico	State	Florida	ZIP	33594	Country	US

☒ Additional inventors are being named on the 1 supplemental Additional Inventor(s) sheet(s) PTO/SB/02A attached hereto.

DECLARATION

ADDITIONAL INVENTOR(S)
Supplemental Sheet
Page 3 of 3

Name of Additional Joint Inventor, if any:

☐ A petition has been filed for this unsigned inventor

Given Name (first and middle [if any])

Family Name or Surname

James

Frey

Inventor's
Signature

Date

29 Sept 2000

Residence: City

Fairport

State

New York

Country

US

Citizenship

U.S.

Post Office Address

53 Erie Drive

Post Office Address

City

Fairport

State

New York

ZIP

14450

Country

US

Name of Additional Joint Inventor, if any:

☐ A petition has been filed for this unsigned inventor

Given Name (first and middle [if any])

Family Name or Surname

Inventor's
Signature

Date

Residence: City

State

Country

Citizenship

Post Office Address

Post Office Address

City

State

ZIP

Country

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Given Name (first and middle [if any])

Family Name or Surname

Inventor's
Signature

Date

Residence: City

State

Country

Citizenship

Post Office Address

Post Office Address

City

State

ZIP

Country

+

JUN 03 2005

Please type a plus sign inside this box ☒

PTO/SB/01 (12/97)

Approved for use through 09/30/00, OMB 0651-0032

**DECLARATION FOR UTILITY OR
DESIGN
PATENT APPLICATION
(37 CFR 1.63)**

☐ Declaration Submitted with Initial Filing OR ☒ Declaration Submitted after Initial Filing (surcharge (37 CFR 1.16(e)) required)

Attorney Docket Number 32156.0005
First Named Inventor Boerner, et al

COMPLETE IF KNOWN

Application Number
Filing Date September 28, 2000
Group Art Unit
Examiner Name

As a below named inventor, I hereby declare that:

My residence, post office address, and citizenship are as stated below next to my name.

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

Device and Method of Determining Emotive Index Corresponding to a Message

the specification of which *(Title of the Invention)*
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OR

☒ was filed on (MM/DD/YYYY) 09/28/2000 as United States Application Number or PCT International Application Number [] and was amended on (MM/DD/YYYY) [] (if applicable).

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment specifically referred to above.

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I hereby claim foreign priority benefits under 35 U.S.C. 119(a)-(d) or 365(b) of any foreign application(s) for patent or inventor's certificate, or 365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below, by checking the box, any foreign application for patent or inventor's certificate, or of any PCT international application having a filing date before that of the application on which priority is claimed.

Prior Foreign Application (Numbers)	Country	Foreign Filing Date (MM/DD/YYYY)	Priority Not Claimed	Certified Copy Attached? YES NO	
			<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>

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Please type a plus sign inside this box ☐

PTO/SB/01 (12/97)

Approved for use through 09/30/00, OMB 0651-0032

+

DECLARATION - Utility or Design Patent Application

I hereby claim the benefit under 35 U.S.C. 120 of any United States application(s), or 365(c) of any PCT international application designating the United States of America, listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT International application in the manner provided by the first paragraph of 35 U.S.C. 112, I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR 1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application.

U.S. Parent Application or PCT Parent Number	Parent Filing Date (MM/DD/YYYY)	Parent Patent Number (if applicable)

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As a named inventor, I hereby appoint the following registered practitioner(s) to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith:

☐ Customer Number
OR

☒ Registered practitioner's name/registration number listed below

Place Customer
Number Bar Code
Label Here

Name	Registration Number	Name	Registration Number
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Martin G. Linihan	24,926	Michael F. Scalise	34,920
Kevin D. McCarthy	35,278	Daniel C. Oliverio	33,435
David L. Principe	39,336	Edwin T. Bean, Jr.	16,639

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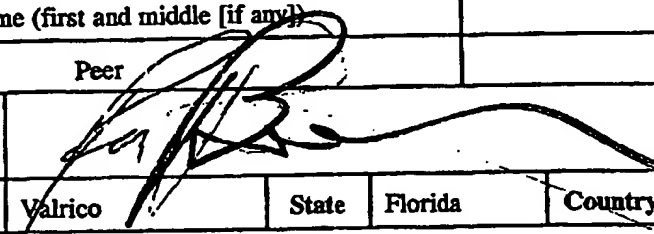
Direct all correspondence to: ☐ Customer Number or Bar Code Label ☐ OR ☒ Correspondence address below

Name	R. Kent Roberts				
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City	Buffalo	State	New York	ZIP	14203-2391
Country	United States	Telephone	(716) 856-4000	Fax	(716) 849-0349

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☐ A petition has been filed for this unsigned inventor

Given Name (first and middle (if any))		Family Name or Surname			
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Inventor's Signature					Date
Residence: City	Valrico	State	Florida	Country	US
Post Office Address	2313 Timbergrove Drive				
Post Office Address					
City	Valrico	State	Florida	ZIP	33594
Country	US				

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Please type a plus sign inside this box ☐

PTO/SB/02A (3/97)

Approved for use through 09/30/00, OMB 0651-0032

+

DECLARATION	ADDITIONAL INVENTOR(S) Supplemental Sheet Page 3 of 3
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Name of Additional Joint Inventor, if any:		<input type="checkbox"/> A petition has been filed for this unsigned inventor					
Given Name (first and middle [if any])				Family Name or Surname			
James				Frey			
Inventor's Signature						Date	
Residence: City	Fairport	State	New York	Country	US	Citizenship	
Post Office Address	53 Erie Drive						
Post Office Address							
City	Fairport	State	New York	ZIP	14450	Country	US
Name of Additional Joint Inventor, if any:		<input type="checkbox"/> A petition has been filed for this unsigned inventor					
Given Name (first and middle [if any])				Family Name or Surname			
Inventor's Signature						Date	
Residence: City		State		Country		Citizenship	
Post Office Address							
Post Office Address							
City		State		ZIP		Country	
Name of Additional Joint Inventor, if any:		<input type="checkbox"/> A petition has been filed for this unsigned inventor					
Given Name (first and middle [if any])				Family Name or Surname			
Inventor's Signature						Date	
Residence: City		State		Country		Citizenship	
Post Office Address							
Post Office Address							
City		State		ZIP		Country	

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